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APPLICATION NO). I	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,576		07/24/2001	John Thomas Allen	SUREB-57333	6668
39607	7590	7590 04/19/2005 EXAMINER			
PETER K			MCKANE, ELIZABETH L		
LUCE, FO	DRWARD, I	HAMILTON, SCRIP			
600 WEST	Γ BROADV	VAY	ART UNIT	PAPER NUMBER	
SUITE 26	00	•	1744		
SAN DIE	GO, CA 9	22101	DATE MAILED: 04/19/2005		

Please find below and/or attached an Office communication concerning this application or proceeding.

				<i>(</i>)			
		Application No.	Applicant(s)				
	Office Astion Commons	09/912,576	ALLEN ET AL.				
	Office Action Summary	Examiner	Art Unit				
	The MAII INC DATE of this communication and	Leigh McKane	1744	14400			
Period fo	The MAILING DATE of this communication app or Reply	18912 OU NIA COAAL SUAAL M	IIII tua correshouneure ar	IGF U SS			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).							
Status							
1)⊠	Responsive to communication(s) filed on 03 Fe	ebruary 2005.					
•	This action is FINAL . 2b) ☐ This action is non-final.						
3)□	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
	·	:x parte Quayle, 1955 C.L	J. 11, 453 U.G. ∠13.				
·	ion of Claims						
5)□ 6)⊠ 7)□	Claim(s) 1,3,4,6,7 and 9-52 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. Claim(s) is/are allowed. Claim(s) 1,3,4,6,7 and 9-52 is/are rejected. Claim(s) is/are objected to. Claim(s) are subject to restriction and/or election requirement.						
Applicati	ion Papers						
 9) ☐ The specification is objected to by the Examiner. 10) ☒ The drawing(s) filed on <u>03 February 2005</u> is/are: a) ☒ accepted or b) ☐ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d). 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. 							
Priority ι	under 35 U.S.C. § 119						
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No. 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 							
Attachmen	t(s)						
	e of References Cited (PTO-892)		Summary (PTO-413)				
3) 🔲 Inforr	te of Draftsperson's Patent Drawing Review (PTO-948) mation Disclosure Statement(s) (PTO-1449 or PTO/SB/08) or No(s)/Mail Date		(s)/Mail Date Informal Patent Application (PT0 	O-152)			

Art Unit: 1744

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3, 5, 6, 7, and 9-52 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 6, 7, 9-36, 39, 42-44 of copending Application No. 09/872441. Although the conflicting claims are not identical, they are not patentably distinct from each other.

Specifically, the subject matter of the instant claims is encompassed in their entirety by the copending claims except that the instant claims also require a container for the articles. It is not deemed patentable to provide a container for holding the articles being irradiated by the method and apparatus of 09/872441, as containers are commonly employed for ease of handling. As such, the use of containers would have been obvious in the method and apparatus of 09/872441.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Amendment

3. The amendment to claim 1 has overcome the rejection under 35 U.S.C. §103(a) as being unpatentable over Welt et al. However, the double patenting rejection over copending Application No. 09/872441 stands.

Conclusion

4. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (6:30 am-4:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Primary Examiner

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18 April 2005